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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/756,597	01/05/2001	Prodromos Pericles Stephanos	STEP-00-001	4758
33321	7590	02/23/2004	EXAMINER	
DANIEL P. MAGUIRE 423 E ST. DAVIS, CA 95616			TOOMER, CEPHIA D	
			ART UNIT	PAPER NUMBER
			1714	
DATE MAILED: 02/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

### Application No.

09/756,597

### Applicant(s)

STEPHANOS, PRODRAMOS  
PERICIES

### Examiner

Cephia D. Toomer

### Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

This Office action is in response to the amendment filed September 29, 2003 and the declaration filed September 2, 2003. In the amendment, claims 23-25 were added.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 23-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original filed specification does not support the language "a polymeric gel thickening agent".

3. Claims 1-22 are rejected under 35 USC 103(a) as being unpatentable over Wilkins (US 5,252,107) in view of Wesley (US 5,773,706) for the reasons of record and the following comments.

4. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that Wesley's gelling method cannot be readily adapted to gel the lighter fluid of Wilkins because Wesley must use a combination of the polymer and a rheological additive.

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The claims (1-22) do not exclude the rheological additive of Wesley. Applicant's claim language "comprising " opens the claim to a major amount of an unrecited compound.

Applicant argues that Wesley is designed to gel polar solvents and not d-limonene, a non-polar solvent.

Wesley teaches that the fuels of his invention include aromatic and alkenes. Terpenes may be aromatic and alkenes. d-limonene is considered an aromatic compound since it has an unsaturated cyclic ring. Wesley is not limited to polar solvents even though the preferred solvent is an alcohol. With respect to Wesley not teaching gelling an emulsion, Wesley is relied upon for teaching gelling agents that are used in lighter fluids. The claims as drafted do not contain the limitation that the composition is an emulsion.

Applicant argues that Wesley does not exemplify any compounds wherein the molecules are 10 carbon atoms or more.

Wesley's general teaching of aromatics and alkenes encompass the claimed compounds. Furthermore, it is well settled that a reference must be considered for all that it teaches and is not limited to the example therein.

Applicant argues that the present invention uses ethanol and methanol, whereas Wilkins prefers C<sub>3</sub> -C<sub>6</sub> alkanols. Applicant argues that ethanol and methanol are not homologues of propanol.

Hawley's Condensed Chemical Dictionary defines a homologous series as "A series of organic compounds in which each successive member has one more CH<sub>2</sub>

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group in its molecule than the preceding member. For instance  $\text{CH}_3\text{OH}$  (methanol),  $\text{C}_2\text{H}_5\text{OH}$  (propanol), etc, form a homologous series."

Applicant argues that Wilkins is a single-phase clear stable solution whereas the present invention is an emulsion.

Applicant's claims are not directed to an emulsion. Even if the present invention is an emulsion, Wilkins teaches the lighter fluid minus the thickener. The thickener does not function as an emulsifier. Therefore, if applicant's composition is an emulsion so is Wilkins. Furthermore, Wilkins teaches that the composition is initially an emulsion but becomes clear upon standing for several hours.

Applicant argues that the examiner's rejection of the evidence of nonobviousness is erroneous. Applicant argues that licensing is, by itself, an objective indicator of nonobviousness.

The examiner respectfully disagrees. While applicant has been able to license his invention, licensing programs may succeed for reasons unrelated to the unobviousness of the product, e.g. license is mutually beneficial or less expensive than defending infringement suits. *Hybritech INC.V. Monoclonal Antibodies, INC.* 231 USPQ 81 (Fed. Cir 1986).

The product gross sales of 250,000 may be 1 percent of the market share. Given that some advertising was done and Duraflame is a well-recognized company, these factors may have attributed to the number of units sold.

In answer to applicant's statement as to what is meant by normal sales, the examiner is referring to what the gross sales are for lighter fluids in general.

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The examiner maintains that the evidence is not commensurate in scope with the claims. In the order to be commensurate in scope with the claims, the commercial success must be due to all claimed features. Features responsible for applicant's success are recited in the dependent claims and are not commensurate in scope with the broad claims at issue. See MPEP 716.03 for discussion of commercial success.

Since Mr. Gustafson's declaration goes hand-in-hand with applicant's arguments, the examiner's response is directed to the declaration and arguments. Mr. Gustafson's declaration is not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

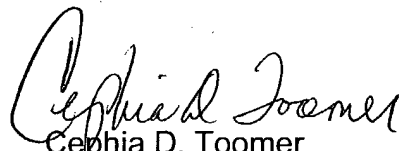
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cephia D. Toomer  
Primary Examiner  
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